

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

DAVID SENICK,	:	
	:	
Plaintiff	:	CIVIL ACTION NO. 3:22-408
	:	
v.	:	(JUDGE MANNION)
	:	
RAILROAD RETIREMENT BOARD,	:	
	:	
Defendant	:	

ORDER

Pending before the court is the report of Magistrate Judge William I. Arbuckle, which recommends that the defendant's motion to dismiss (Doc. 15) be granted and the instant action dismissed. (Doc. 26). The plaintiff has failed to file objections to the report and recommendation of Judge Arbuckle.

Where no objection is made to a report and recommendation, the court should, as a matter of good practice, "satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Fed. R. Civ. P. 72(b), advisory committee notes; see also *Univac Dental Co. v. Dentsply Intern., Inc.*, 702 F.Supp.2d 465, 469 (M.D.Pa. 2010) (citing *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every report and recommendation)). Nevertheless, whether timely objections are made or not, the district court

may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. §636(b)(1); Local Rule 72.31.

By way of relevant background, the plaintiff brought the instant breach of contract claim challenging decisions by the defendant to deduct workers' compensation and Social Security survivor benefit payments from the amount of plaintiff's disability annuity to which he was previously found entitled. The defendant filed a motion to dismiss the plaintiff's complaint arguing that subject matter jurisdiction is barred by 45 U.S.C. §§355(f) and 231g because the plaintiff has failed to exhaust his administrative remedies and because exclusive jurisdiction to challenge the decisions would be vested in the specific United States Court of Appeals. (Doc. 15). In deciding the defendant's motion, Judge Arbuckle agreed with both arguments and therefore recommends that the instant action be dismissed. As previously stated, the plaintiff has not filed any objections to Judge Arbuckle's report and recommendation.

Upon review of Judge Arbuckle's report and recommendation, the court finds no clear error of record. Moreover, the court agrees with the sound reasoning which led Judge Arbuckle to his conclusions. As such, the court will adopt Judge Arbuckle's report in its entirety.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

(1) The report and recommendation of Judge Arbuckle (**Doc. 26**)

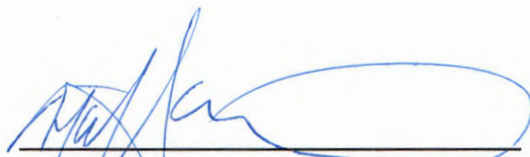
is **ADOPTED IN ITS ENTIRETY** as the decision of the court.

(2) The defendant's motion to dismiss (**Doc. 15**) is **GRANTED**.

(3) The plaintiff's complaint (**Doc. 1**) is **DISMISSED**.

(4) The plaintiff's motion to compel (**Doc. 22**) is **DISMISSED AS MOOT**.

(5) The Clerk of Court is directed to **CLOSE THIS CASE**.



MALACHY E. MANNION

United States District Judge

DATE: January 30, 2023

22-408-01